

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CIVIL MISCELLANEOUS JURISDICTION No.1644 of 2018**

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1. Dr. Vivek Sinha and Anr Son of Late Bimal Sinha
2. Abhishek Sinha Son of Late Bimal Sinha Both R/o 9 Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna

.. ... Petitioner/s

Versus

1. Smt. Seema Prasad @ Smt. Seema Dyakriti W/o Major Pushkar Prasad, D/o Late Krishna Kishore Sinha R/o 9 Patliputra Colony, P.S. Patliputra Colony, Town and District-Patna, presently residing at Flat No. 93, Tower H, DLF Park Place, DLF City, Phase No. 5, Sector GY, Gurgaon-122002
2. Patliputra Co-operative House Construction Society Limited, through its Secretary having its office

... ... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Subroteswar De, Adv.

For the Respondent/s : Mr. Sushmita Mishra, Adv.

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**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH  
CAV JUDGMENT**

**Date : 15-11-2025**

The present Civil Misc. has been filed for setting aside the order dated 21.08.2018 passed by the learned Sub Judge 2<sup>nd</sup>, Patna in Misc. Case No. 03 of 2014 (B) whereby the learned court below allowed the Misc. Case filed by opposite party first set under provision of Order IX Rule 9 of the C.P.C. for restoration of Title Partition Suit No. 122 of 1997 and for any other writ/command or order which may be fit in the facts and circumstances of



the case.

2. It is submitted by learned counsel for the petitioner that opposite party 1<sup>st</sup> set has filed the Misc. Case No. 03 of 2014 (B) for restoration of the Title Partition Suit No. 122 of 1997 which was dismissed for default on 31.07.2003 due to non- appearance on behalf of both the plaintiffs. In that suit plaintiff No. 1 was her father K.K. Sinha and she was named as plaintiff No. 2. This partition suit was filed against the late father of these petitioners Late Bimal Sinha. It is further submitted that the title partition suit was filed by her and her father in the year 1997 and continued upto July 2003 when neither her father nor she led any Pairvi in the said suit for last several dates. Her father thereafter was also alive for more than 7 years, he died on 9.12.2010 after the dismissal of the title partition suit but she did not took any steps for restoration of partition suit. After 4 years of her father's death she became clever and due to her greedy nature had filed this Misc. case on wrong and false pleas



that she had no knowledge during 11 years about the order of the dismissal.

3. The aforesaid Misc. case No. 03 of 2014, filed by the respondent was allowed by the impugned order which is under challenge in this Civil Miscellaneous.

4. It is submitted on behalf of respondent – plaintiff that petitioner is the daughter of Late Krishna Kishore Sinha (Plaintiff No. 1 of Title Partition Suit No. 122 of 1997) and her case is that plaintiff No. 1 – (Krishna Kishore Sinha) of Title Partition Suit No. 122 of 1997 died on 09.12.2010 at Bhubaneshwar leaving behind a widow and a daughter ( plaintiff No. 2 of Title Partition Suit No. 122 of 1997) whereas the defendant No. 1 of Title Partition Suit No. 122 of 1997 died leaving behind two sons and one daughter. The further case of the petitioner is that although the wife of Krishna Kishore Sinha was alive at the time of filing of said Title Partition Suit No. 122 of 1997 but the plaintiff No. 1 Krishna Kishore Sinha is not incorporated his wife as party to the



suit rather he included the petitioner (daughter) in the same suit. Now, the further case of petitioner is that the father of Krishna Kishore Sinha was looking entire affairs of home. So, neither the petitioner nor her mother were aware about exact property of her maternal family and share therein. As per the case, she came to know about the pendency of Title Partition Suit No. 122 of 1997 in the month of September and obtained the copies of order sheet and plaint of the said suit in the last week of December 2013 at her residence at Gurgaon and came to know that the said suit was dismissed for default on dated 31.07.2003 and entire property of her family was under dispute and subject matter of Title Partition Suit No. 122 of 1997, so the entire share of the petitioner and her mother was involved in the said Title Partition Suit No. 122 of 1997 and this petition has been filed from the date of knowledge of its dismissal after receiving the entire order sheet and plaint.

5. After hearing both parties, it appears that



Krishna Kishore Sinha and his daughter, Seema Prasad (the present respondent), were the plaintiffs in *Title Partition Suit No. 122 of 1997*, which was dismissed for default on 31.07.2003. According to the submission of respondent Seema Prasad, the pairvi in the said case was being conducted by her father, who subsequently passed away on 09.12.2010. She further stated that after her marriage, she began residing at her matrimonial home and, therefore, remained unaware of the status of *Title Partition Suit No. 122 of 1997*, although she claims to have subsisting right, title, and interest in the suit property. Upon learning of the dismissal of the aforesaid suit, she instituted *Miscellaneous Case No. 03 of 2014*. In the said proceeding, evidence was adduced by both sides, and after considering the entire materials and submissions on record, the learned trial court allowed the *Miscellaneous Case* after condoning the delay, and restored *Title Partition Suit No. 122 of 1997* to its original stage based on the grounds advanced by the plaintiff-



respondent.

6. The thrust of argument on behalf of petitioner is that point of limitation and sufficient cause for filing delayed application Order IX Rule 9 of the C.P.c. has not been applied in a right perspective. On this point, learned counsel appearing on behalf of the respondent referred the case of :

(A) **Union of India & Anr. v. Jahangir Byramji Jeejeebhoy (D) Through His Legal Representative**, reported in [2024] 4 S.C.R. 76 2024 INSC 262, Civil Appeal No. 4672/2024 decided on 03.04.2024 during course of discussion Hon'ble Apex Court referred the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy (2013) 12 SCC 649**, and observed that:

“ 21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (I) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are



obliged to remove injustice.

21.2. (ii) The terms 'sufficient cause' should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a



totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law



of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

**(B) Sheo Raj Singh (Deceased) Through Legal Representatives and Others vs. Union Of India and Another**, reported in **(2023) 10 SCC 531**, in which it is held :-

“ (c) .....

(d) .....

(e) – For such an application for condonation to be seen in a positive light, the same should be bona fide, based on true and plausible explanations, and should reflect the normal conduct of a common prudent person – Further, the explained delay should be clearly understood in contradistinction to inordinate unexplained delay to warrant a condonation.

(f) – What counted was indeed the sufficiency of the cause of delay, and not the length, where the shortness of



delay would be considered when using extraordinary discretion to condone the same – Courts should attempt to decide a case on its merit, unless the same is hopelessly without merit.”

7. On the anvil of aforesaid principle of Hon'ble Apex Court, it appears that the case should be decided on its merit and procedural latches should not come in the way of final decision of the case. Hon'ble Apex Court has clearly upheld that the Court should attempt to decide a case on merit unless the same is hopelessly without merit. In Title Partition Suit No. 122 of 1997, filed by plaintiff – respondent has not been decided on merit, rather it was dismissed in default. Mainly 03 reliefs have been sought for in that suit, apart from other ancillary reliefs.

8. After hearing the arguments advanced on behalf of petitioner, it is clear that although the relief No. 3, sought for in the plaint, has been decided up-to the appellate stage in the Test Suit No. 06 of 1997 but the relief Nos. 1 & 2 of the plaint have not been decided till date and this dispute is still in existence between the



parties which requires adjudication by the Trial Court. It is upheld by Division Bench of this Court in **L.P.A. No. 570 of 2015** :-

“ it is a settled proposition of law that in a testamentary suit only the genuinity and validity of the Will is decided and title of the testatrix in the bequeathed property is not a subject matter for adjudication in Testamentary Suit.”

9. It is clear from the aforesaid observation of the Hon’ble Division Bench that title of the testatrix in the bequeathed property was not decided because it was not subject matter for adjudication on the Testamentary Suit. So, relief No. 1 & 2, sought for in Title Partition Suit No. 122 of 1997 is yet to be decided.

10. Hence, I find that there is no illegality and impropriety in the Impugned Order, dated 21.08.2018, passed by the learned Sub Judge 2<sup>nd</sup>, Patna in Misc. Case No. 03 of 2014 (B). So, it is upheld and accordingly, the instant Civil Misc. No. 1644 of 2018 stands dismissed.

11. Learned Trial Court is directed to expedite the



trial and dispose of the case expeditiously, at the earliest.

**(S. B. Pd. Singh, J)**

Nirajkr/-

<b>AFR/NAFR</b>	NAFR
<b>CAV DATE</b>	30.10.2025
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